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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES PEACE,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER
03-CV-0664A(F)

Plaintiff has moved to have counsel appointed to represent him in this matter in which he seeks review of the Social Security Administration's denial of his application for social security benefits. (Docket No. 12). For the reasons stated below the motion is denied without prejudice.

The factors to be considered in ruling on a motion for the appointment of counsel include "the merits of plaintiff's case, the plaintiff's ability to pay for private counsel, [plaintiff's] efforts to obtain a lawyer, the availability of counsel, and the plaintiff's ability to gather the facts and deal with the issues if unassisted by counsel." *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 172 (2d Cir. 1989).

The Court must consider the issue of appointment carefully, of course, because "every assignment of a volunteer lawyer to an undeserving client deprives society of a volunteer lawyer available for a deserving cause." *Cooper*, 877 F.2d at 172. Therefore, the Court must first look to the "likelihood of merit" of the underlying dispute, *Cooper*, 877 F.2d at 174, and "even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the . . . claim are thin and his chances of prevailing are therefore poor." *Carmona v. United States Bureau of Prisons*,

243 F.3d 629, 632 (2d Cir. 2001) (denying counsel on appeal where petitioner's appeal was not frivolous but nevertheless appeared to have little merit).

Plaintiff seeks counsel because he has been unable to find counsel to represent him. This is simply an inadequate showing that the appointment of counsel is warranted in this matter. Moreover, the issues raised in this matter appear to be ones which can be addressed and reviewed solely by means of the administrative record already before the Court.

Further, in order to assist plaintiff in pursuing his case *pro se*, the Clerk of the Court is directed to send plaintiff a copy of the Court's booklet entitled Pro Se Litigation Guidelines.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: September 26, 2005
Buffalo, New York